

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.681 of 2017

ORDER:

The prayer in the writ petition is reads as under:

“to pass an order or direction more particularly one in the nature of Writ of Mandamus to declare the action of the respondents more particularly respondent No.3 not refund the security deposit amount of Rs.11,59,980/- as illegal, arbitrary, unconstitutional and contrary to the policy of the Government of India, Ministry of Railways, consequently direct the respondents to refund the security deposit an amount of Rs.11,59,980/- to the petitioner and pass..”

2. Heard the learned counsel for petitioner, and Sri P.Prabhakar Rao, Standing Counsel on behalf of the respondents 1 to 3 and perused the prayer in the writ petition with supporting affidavit and the other material on record including counter affidavit of the respondents.

3. It is the supporting affidavit averment that the respondents without any manner of right willfully withheld the security deposit amount of Rs.11,59,980/- in an arbitrary and unreasonable manner.

4. The counter affidavit, in opposing the claim, reads in nut shell that the terms and conditions stipulated in the agreement dated 21.05.2015, particularly from condition No.2 that there shall be security deposit as a performance guarantee to adjust in case of performance failure or non-

payment of railway's dues for whatsoever reason the railway administration to forfeit the same by encashing the same during the period of validity of the FDR, that was given towards the security deposit, and as per condition No.18, for recovery of railway's dues the railway administration specifically reserves its right to recover/ deduct of railway's dues from leaseholders' security deposit and it is the submission that there is another arbitration proceedings in respect of the claim covered by another lease agreement for Rs.42,12,245/- and thereby, the security deposit can be withheld. It is also further contended that if at all there is no dispute in relation to the refund of amount claimed, there is remedy of arbitration and the Writ Petition is not maintainable.

5. In fact, so far as condition No.18 is concerned, it is very clearly speaks that the railway administration reserves the right to recover/ deduct of railway's dues from leaseholders' security deposit on the following grounds:

i) Any amount imposed by Railway Administration as a fine, wharfage, demurrage, and punitive charges on over loading, re-weighment charges, detention charges, unloading/ loading charges etc.

(ii) Recovery of costs on account of loss caused to Railway property due to any direct or indirect action of the Leaseholder.

(iii) Any amount, which Railway becomes liable to Government, third party on account of any default on the part of

leaseholder or his representative or his laborers. Any payment/ fine made under the order of law enforcing agency or

(iv) Once the amount under this clause is debited, the leaseholder shall reimburse the same by depositing to the extent the amount is debited within 15 days period failing which it will be treated as breach of agreement.

Even taken the claim on hand is one of the four grounds of condition No.18, what it speaks is security deposit adjustment and it is not even the wording of security deposits and other amounts due under other contracts. There can be only one security deposit in one contract even as per condition No.2 and as per condition No.2 there is one FDR given as security deposit towards the performance guarantee. It is not even a case of there is a performance failure and non-payment of dues covered by the contract on hand and the security deposit can be adjusted. What they are claiming for the amount covered by arbitration proceedings which is outcome of another contract and for its recovery as if they are entitled to withhold the security deposit amount of the present contract. It is thus not specifically covered by condition No.18 of the written stipulations of the agreement supra. Once such is the state of affairs from the agreement and the conditions stipulated, the detention is untenable.

6. Coming to the maintainability of the writ petition, from condition No.25 provides arbitration clause concerned, it is very clear from the wording that in case of any dispute in

interpretation of policy, the decision of railway administration shall be final and binding, if any dispute or difference of any kind whatsoever arises between parties hereto in connection with or arising out of this agreement parties the aggrieved party shall spell out the differences in writing and parties herein shall promptly settlement, in the event no amicable resolution and settlement is reached within a period of 90 days from the date of which the dispute/differences arose, demand in writing shall be made for arbitration. Needless to reproduce the remaining portion of condition No.25, suffice to say from the above that in writing it must be spelt out from which the settlement must be arrived within 90 days and if not, only the invoking of arbitration clause by any of the aggrieved arises. It is thus premature to invoke condition No.25, much less to contend therefrom of the Writ Petition thereby as if not maintainable.

7. Having regard to the above and in the result, this Writ Petition is disposed of for the respondents have no right to withheld the security deposit amount for no claim due either under condition No.18 or under condition No.2 outcome of the contract on hand and thereby, the writ petitioner is given liberty pursuant to condition No.25(a) and 25(b) to make a representation in writing for settlement and payment of the

amount, which the respondents have to pay. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

01.05.2018
MVA

